



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 27, 1995

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
Legal Affairs Division  
Texas Department of Criminal Justice  
P.O. Box 99  
Huntsville, Texas 77342-0099

OR95-1147

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34034.

The Texas Department of Criminal Justice (the "department") has received a request for the records of a particular internal affairs investigation of two employees. You have submitted a representative sample of the requested information for our review and claim that sections 552.101, 552.107(2), 552.108, and 552.117 of the Government Code except the information from required public disclosure. We address your arguments in turn.

Section 552.101 excepts from required public disclosure information that is confidential by law, including information that is confidential by statute. Section 19A(b) of V.T.C.S. article 4413(29cc) reads as follows:

Except as provided by Subsection (d) of this section, a person for whom a polygraph examination is conducted or an employee of the person may not disclose to another person information acquired from the examination.

Subsection (b) prohibits the department from disclosing "information acquired from the [polygraph] examination," except as provided by subsection (d) of section 19(A). Subsection (d) provides as follows:

A person for whom a polygraph examination is conducted or an employee of the person may disclose information acquired from the examination to a person described by Subdivisions (1) through (5) of Subsection (c) of this section.

This provision permits the department to release polygraph information to certain persons described in subsection (c). Subdivision (1) of subsection (c) authorizes release of polygraph information to, among other persons "the examinee or any other person specifically designated in writing by the examinee." The requestor in this case has not provided evidence that she has been "specifically designated in writing" to obtain the polygraph information. Thus, the requestor is not entitled to the polygraph information pursuant to subsection (d) of section 19(A). Therefore, the department must withhold information acquired from a polygraph examination pursuant to section 552.101 in conjunction with V.T.C.S. article 4413(29cc), section 19A(b).

You next claim that the identities of the inmates and any inmate grievances that may be involved in the investigation are excepted from disclosure under section 551.107(2) of the Government Code. Section 552.107(2) excepts information from required public disclosure when a court order prohibits its release. You claim that section 552.107(2) applies to this request for information because the identities of the inmates involved are "sensitive materials" under the Stipulated Modification of Section IID and Section IIA of the amended decree (the "Stipulated Modification") in *Ruiz v. Estelle*, No. H-78-97, slip op. (S.D. Tex. June 1, 1982), *reprinted in* 679 F.2d 1115, 1174-84 (5th Cir. 1982), *aff'g in part and vacating in part* 503 F. Supp. 1265 (S.D. Tex. 1980), *amended in part*, 688 F.2d 266 (5th Cir. 1982) (per curiam on motion for rehearing), *cert. denied*, 460 U.S. 1042 (1983). In Open Records Decision No. 560 (1990), this office concluded that the predecessor to section 552.107(2) prohibited disclosure of "sensitive materials" as defined in the Stipulated Modification. "Sensitive materials" include, among other things, "an inmate's unit and department files, and all documents typically filed therein, travel cards, disciplinary reports, incident reports, use of force reports and grievances." Stipulated Modification, *Ruiz*, slip op. at 2, *reprinted in* 679 F.2d at 1174. The Stipulated Modification further provides that "[n]o inmate has access to sensitive information, and all sensitive materials are kept inaccessible." *Id.*, slip op. at 9, *reprinted in* 679 F.2d at 1178.

In Open Records Decision No. 560 (1990), we concluded that because the *Ruiz* lawsuit was not yet final, the forum court was the proper authority to determine that court's intent in the Stipulated Modification. However, the final judgment in *Ruiz* was signed on December 11, 1992. We are currently reviewing the effect of the final judgment in *Ruiz* on the public availability of department records under the Open Records Act in RQ-779. We have severed out the records containing inmate identities and assigned those records ID# 36693. You may withhold the identities of the inmates pending the outcome of RQ-779. In addition, if the investigation was "triggered by the filing of a formal grievance by an inmate," as you claim may have occurred, you may also withhold the inmate grievance pending the outcome of RQ-779. We will rule on ID# 36693 once RQ-779 is issued.

You next claim that section 552.108 of the Government Code excepts the requested information from required public disclosure because "it is an active criminal investigation." Section 552.108(a) excepts from disclosure a "record of a law enforcement agency or prosecutor that deals with the detection, investigation, and prosecution of crime." In an open criminal case, section 552.108 exempts from disclosure all information except that normally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *Open Records Decision No. 127* (1976). Once a case is closed, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." *Open Records Decision No. 628* (1994) at 2 (and cases cited therein). A governmental body claiming the "law enforcement" exception must reasonably explain how and why release of the requested information would unduly interfere with law enforcement and crime prevention. *Open Records Decision No. 434* (1986) at 2-3.

Although you claim that the requested records are part of an active criminal investigation, one of the subjects of the investigation has provided this office with a copy of an order of the Presiding Judge of the 52nd Judicial District, Coryell County, Texas, dated August 23, 1995, which dismisses the criminal charges against that person. Furthermore, the records you submitted for review to this office indicate that this is the only person against whom criminal charges were filed. Therefore, because criminal charges are no longer pending, we conclude that the case is closed and you may not withhold the records under section 552.108 as an active criminal investigation.

You generally claim that release of the identities of the department employee witnesses would subject them to harassment or retaliation such that release of the information would "unduly interfere with law enforcement." *See generally*, *Open Records Decision No. 628* (1994) at 2-3. Whether the release of particular records will unduly interfere with law enforcement must be determined on a case-by-case basis. *Open Records Decision No. 409* (1984) at 2. Your statements regarding retaliation or harassment of employee witnesses are conclusory and generalized in nature and provide no basis on which to conclude that any of the employees would be subject to retaliation or harassment in this particular instance. Furthermore, the records themselves do not indicate that any of the witnesses may be retaliated against. Therefore, you may not withhold the identities of the employee witnesses under section 552.108.

Lastly, you claim that the addresses, telephone numbers, and social security numbers of department employees are confidential pursuant to section 552.117. We agree. You may withhold such information as it appears in the requested records.<sup>1</sup>

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<sup>1</sup>The Seventy-fourth Legislature has significantly amended the Open Records Act effective September 1, 1995. *See* Act of May 29, 1995, H.B. 1718, 74th Leg., R.S. ch. 1035, § 1, 1995 Tex. Sess. Law Serv. 5127 (Vernon) (to be codified as an amendment to Gov't Code ch. 552). We do not address in this ruling whether these recent amendments to the Open Records Act will affect requests for this information that are made on or after September 1, 1995.

In conclusion, you must withhold information acquired from a polygraph examination unless the subject of the examination authorizes release of the information to the requestor; inmate identities and grievances pending RQ-779; and the home addresses, telephone numbers, and social security numbers of department employees. All remaining information must be disclosed.<sup>2</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/rho

Ref.: ID# 34034

Enclosures: Submitted documents

cc: Ms Debbie Louder  
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(w/o enclosures)

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<sup>2</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.